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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DINH, MINH

ART UNIT

PAPER NUMBER

2132

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/729,530	Applicant(s) FAKES ET AL.	
	Examiner MINH DINH	Art Unit 2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,15-30,35,36,42,43 and 47-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-14,31-34,37-41 and 44-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/24/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment filed 03/24/08. Claims 31-34 and 37-39 have been amended; Claims 50-53 have been canceled.

Response to Arguments

2. Applicant's arguments with respect to the rejection of claims 1-4, 7-14, 31-34, 37-41 and 44-46 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps have been fully considered but they are not persuasive. Applicant argues that Figure 3 discloses processes/subprocess but not "steps" and, therefore, they may be performed **in any order, in series or parallel** (page 17, 1st paragraph). One of ordinary skill in the art would readily recognize that the steps described in Figure 3 were supposed to be completed in a certain order (i.e., according to the flow of the drawing) no matter what these steps are called (acts, processes, or subprocess). Applicant is requested to provide logical and working examples to support the assertion that these steps may be performed in any order (e.g., does it make sense to perform step 312 before step 304, or step 316 before step 306?).

Applicant argues that the elements are not "essential" because they are not "described by the applicant(s) as necessary to practice the invention"

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as required under MPEP 2172.01 (page 17, last paragraph). According to MPEP 2172.01, a claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes. The steps described in figure 3 are directly functionally related, i.e., the completion and result of one step is necessary to perform the next step.

3. Applicant's arguments with respect to the rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Miliefsky (US 2005/0044418 A1) in view of Moshir et al. (US 2004/0003266 A1) have been fully considered but they are not persuasive.

Applicant argues that Miliefsky and Moshir fail to teach or suggest "each of the plurality of security engines processing at least a portion of the new security policy to establish new rules for operation of the security engine while the security engine continues to operate according to previous rules" (page 21). Moshir discloses that security policy updating starts with (i) downloading the new/updated policy and then (ii) installing the downloaded new/updated policy (paragraph 0075). The downloading step is functionally equivalent to processing at least a portion of the new security policy to establish new rules for operation of the security engine. In

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addition, the new/updated security policy is not in effect until the installing step is completed (i.e., until it is installed). Therefore, the current security policy is still in effect during the downloading step.

Applicant argues that Miliefsky and Moshir fail to teach or suggest "switching, after each of the plurality of security engines is ready to begin using the new security policy, each of the plurality of security engines to the new rules substantially concurrently" (page 22, first full paragraph). Moshir discloses that policy updates are delivered/downloaded to users' computers in the background and then "auto-installed according to a schedule set by the administrator" (par. 0133, 0158). In a best case scenario, the updates are installed properly on each user computer, and, thus, these computers switch to the update policy substantially concurrently.

4. Applicant's arguments with respect to the rejection of claims 31 and 40 under 35 U.S.C. 103(a) as being unpatentable over Moshir in view of Date ("An Introduction to Database System") have been fully considered but they are not persuasive. Applicant argues that Moshir and Date fail to teach or suggest "continue to use a previous set of rules and associated data *until an indication* to begin using the new set of rules and associated data is identified." (page 25, last paragraph; page 26, last paragraph). Date discloses a two-phase commit protocol used in an update operation involving

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multiple participants whereby each participant receives *a system-wide commit command* if all of the participants have successfully processed the update (page 463).

With respect to claim 14, Applicant argues that Date do not teach firing an event across all of the security engines at once (page 25, first paragraph). Date discloses that the coordinator informs each participants of its "commit" decision (page 463, phase 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2 and 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miliefsky (US 2005/0044418 A1) in view of Moshir et al. (US 2004/0003266 A1). Miliefsky discloses a computing device comprising a plurality of security engines each having a current security policy (i.e., an INFOSEC ENGINE with plug-in components such as a firewall engine, an antivirus engine, an intrusion detection engine, a vulnerability analysis engine, a denial-of-service engine, etc.) (Fig. 7; paragraph 0039). Miliefsky

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also discloses updating the security policies (i.e., performing security updates and upgrade patches for the plug-in components) (paragraph 0041). Miliefsky does not disclose switching, after each of the plurality of security engines is ready to begin using new security policy, each of the plurality of security engines to the new rules substantially concurrently. Moshir discloses a method and system for updating security policies for a plurality of security engines (i.e., antivirus software files, a security fix/patch) (paragraphs 0059, 0181). Specifically, Moshir discloses that the security policies for the plurality of security engines are updated according to a scheduled rollout, and each security engine is to report the result of the update, whether a success or a failure/error. Moshir further discloses that if a failure is detected, an order is issued to the security engines to rollback to their previous state; otherwise, the rollout is successful and the new security policy is in effect (paragraphs 0030, 0074-0078, 0133, 0158, 0190). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Moshir's method of updating security policies into Miliefsky's system. The motivation for doing so would have been to leave the network in a usable state in case of a faulty update (paragraph 0045).

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7. Claims 3-4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miliefsky in view of Moshir as applied to claims 1 and 13, and further in view of Date ("An Introduction to Database System"). Moshir discloses that the security engines receive a system-wide rollback if any of the security engines has failed to process the new security policy; however, Moshir does not disclose that the security engines receive a system-wide commit command (i.e., an indication such as a function call to switch to the new policy) if all of the security engines have successfully processed the new security policy. Date, in addition to a system-wide rollback as described in Moshir, discloses a two-phase commit protocol used in an update operation involving multiple participants whereby each participant receives a system-wide commit command if all of the participants have successfully processed the update (page 463). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method and system of Miliefsky and Moshir to utilize a system-wide commit command, as taught by Date. The motivation for doing so would have been to guarantee that all updates could happen in unison (page 463, 1st paragraph).

8. Claims 31-34, 37-41, 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshir in view of Date. Moshir discloses a method

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comprising: receiving an indication of a new security policy to be used (i.e., new antivirus software files, a security fix/patch); generating a new set of rules from the new security policy (i.e., performing updating of the file/fix/patch) (paragraphs 0030, 0059, 0074-0078); and switching to the new security policy unless a system-wide rollback command is received (paragraphs 0030, 0059, 0074-0078). Moshir does not disclose waiting for a system-wide commit command before switching to the new security policy. Date, in addition to a system-wide rollback as described in Moshir, discloses a two-phase commit protocol used in an update operation involving multiple participants whereby each participant receives a system-wide commit command if all of the participants have successfully processed the update (page 463). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Moshir to utilize a system-wide commit command, as taught by Date. The motivation for doing so would have been to guarantee that all updates could happen in unison (page 463, 1st paragraph).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-

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MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH DINH whose telephone number is (571)272-3802. The examiner can normally be reached on Mon-Fri: 10:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. D./
Examiner, Art Unit 2132

04/28/08

/Gilberto Barron Jr/
Supervisory Patent Examiner, Art Unit 2132